

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY JONES,

Defendant-Appellee.

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UNPUBLISHED

February 26, 1999

No. 202510

Recorder's Court

LC No. 96-008625

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

The people appeal by right an order of the Recorder's Court dismissing a charge of possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), after granting defendant's motion to suppress evidence seized from his motor vehicle without a warrant. We affirm.

On appeal, plaintiff argues that there was probable cause to arrest defendant without a warrant, or at least reasonable suspicion to temporarily detain him, based upon the "lo jack hit" information the police officers received on their patrol car tracking equipment. Alternatively, plaintiff contends for the first time on appeal that the evidence was not seized pursuant to the detention in any event, but rather, as a result of police officer Wright's "plain view."

When a defendant moves to suppress evidence as illegally obtained without a warrant, it is the prosecutor's burden to show that the search and seizure were justified by a recognized exception to the warrant requirement. *People v Wade*, 157 Mich App 481, 485; 403 NW2d 578 (1987). Here, the prosecution failed to present any evidence regarding the reliability of "lo jack" stolen vehicle tracking system information in general, much less the feasibility of using the lo jack system to track stolen vehicles where, as here, the officers have only the lights on the lo jack radio signal tracking device to guide them, prior to obtaining any actual description of the vehicle in question. On this limited record, we are unpersuaded that the prosecution met its burden of establishing either probable cause for an arrest or reasonable suspicion for a limited *Terry* stop on the basis of the lo jack radio signal detection observations alone.

As for plaintiff's alternative argument based upon the plain view exception to the warrant requirement, this issue is unpreserved for review because plaintiff failed to raise it in the proceedings below. Moreover, given the limited record presented in this case, it is not at all clear whether the police were "lawfully in a position from which they could view the item" at the time. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996), cert den \_\_\_ US \_\_\_; 117 S Ct 747; 136 L Ed 2d 685 (1997). While plaintiff compares officer Wright's view of the interior of defendant's vehicle to observations which might be made through a car window, the testimony indicates that officer Wright's view was through an open door on the driver's side of the vehicle, not merely through a window. It is unclear whether defendant would have left his driver's side door open but for his detention by the police. In any event, because the trial court made no findings on this issue, appellate review is foreclosed. See *People v Taylor*, 454 Mich 580, 595-596; 564 NW2d 24 (1997).

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff